

Chapter XIV

PUBLIC EDUCATION AND OUTREACH

A. General Description of Functions

MBC uses a number of methods to educate and communicate with consumers, licensees, and other stakeholders regarding the Board's enforcement program. Through its Public Education Committee (PEC) created in 2002, the Board works to improve communications between MBC and the public. The Committee's goals are to (1) increase the number of Californians who know of the existence of the Board and its enforcement program by bringing together representatives of organizations to develop better ways of communication, and (2) encourage officials and entities that are required to report certain information to the Board to do so.³⁵⁴

Beginning in 2002, the PEC began a targeted effort to increase the Board's visibility and to educate consumers on the role of the Board in licensing and disciplining physicians. It reviewed the various materials that the Board makes available to consumers, and engaged in outreach to the media, other state agencies that regulate health care professionals, consumer groups, and mandated reporters under Business and Professions Code section 800 *et seq.* — inviting representatives of these groups to attend PEC meetings, make presentations, and exchange information about how MBC can better serve its various constituencies and carry out its public protection mandate. In November 2002, the Committee prepared a draft strategic communications plan identifying specific goals and objectives, strategies for achieving those goals and objectives, target audiences for MBC communications, key messages that should be communicated, and measurable outcomes to monitor the Board's success. Due to budget and staffing constraints, the Board has yet to formally adopt the strategic communications plan. However, the PEC voted in May 2003 to approve the plan in concept, review it quarterly, and implement it as resources become available.

Under the general guidance of the PEC, Medical Board staff communicate with the public about the Board's enforcement program on two levels. First, MBC's public information officer

³⁵⁴ Medical Board of California Public Education Committee, *Medical Board of California Communications Plan* (working draft Nov. 5, 2002).

(PIO) and her staff provide information to consumers and the profession through various media, and respond to press inquiries regarding the Board's enforcement actions. The PIO provides general information about the Board's enforcement program and specific disciplinary actions through the publication of MBC's *Action Report* licensee newsletter, its monthly *Hot Sheet* of recent disciplinary actions taken, other Board publications and brochures, and the Board's Web site. Second, the enforcement program itself is responsible for communicating with complainants and with physicians who are the subject of complaints.

The Board's outreach to consumers and patients. The Board conducts public outreach and education to the general public in an effort to ensure that consumers know of the existence of the Board and how they can access the Board's services. The Board maintains a toll-free phone line for complaints,³⁵⁵ but not for general Board information or questions.³⁵⁶ Subject to budget and staffing limitations, the Board engages in public outreach at consumer or healthcare events, and provides presentations about the Board to physician groups and other healthcare entities. The Board has created and distributed public service announcement (PSAs) in English and Spanish for both radio and television. The PSAs, which advise consumers to choose only licensed physicians and to contact MBC if they have questions about the healthcare they have received, are available on the Board's Web site. The Board also created a simple one-page brochure describing the Medical Board and how and when a consumer should contact MBC.³⁵⁷ Finally, the Board engages in outreach to consumers via the media; MBC routinely issues press releases to notify media of disciplinary actions taken by the Board, and these disciplinary actions are often reprinted in newspapers in the locality of the disciplined physician.

MBC's Web site is a helpful tool for consumers seeking more information about their physician or the Board. In addition to allowing patients to access information about an individual physician,³⁵⁸ the Web site provides information on (1) how to file a complaint; (2) the types of complaints over which the Board has jurisdiction; (3) phone numbers for contacting the Board regarding a complaint; (4) links to MBC brochures on complaint handling, investigations, and medical consultants; and (5) a downloadable complaint form that the consumer may complete, print, and mail to the Board.³⁵⁹ The Web site refers patients who have problems with a health plan or their

³⁵⁵ MBC's toll-free complaint line is (800) 633-2322.

³⁵⁶ To ask about a physician's record or obtain general information about the Medical Board, the public must call (916) 263-2382. MBC staff and the Public Education Committee have advocated a toll-free information line for consumers and licensees; due to budget constraints, that proposal has never been adopted or implemented.

³⁵⁷ *Medical Board of California: Information and Services for Consumers* (rev. 7/04).

³⁵⁸ See *supra* Chapter XIII.A.

³⁵⁹ At this time, consumers are unable to submit the complaint form online.

insurance company to the Department of Managed Health Care or the Department of Insurance. By clicking on “Services for Consumers,” one can also access fact sheets related to California physicians and medical marijuana, guidelines for prescribing controlled substances for pain, patient privacy protection, tips on choosing a doctor, Internet prescribing, how to order public documents from the Board, patient access to medical records, resources available for reduced-cost mammograms, specialty board advertising, and links to other MBC forms and publications.

The Board’s outreach to its licensees. The Board’s primary vehicle for communicating with its licensees is the *Action Report*, a quarterly licensee newsletter. The *Action Report* — which is posted on MBC’s Web site so anyone can access it — includes articles on medical issues of interest to physicians, updates on recent legislation, enforcement-related articles (including information on the Board’s Diversion Program for substance-abusing physicians and outreach to licensees who would like to serve as expert medical reviewers for the enforcement program), and a summary of MBC disciplinary actions (including a fairly comprehensive description of terms and conditions of probation that have been imposed — which is frequently missing from MBC’s Web site³⁶⁰). MBC also publishes the *Hot Sheet*, a monthly summary of disciplinary actions taken by the Medical Board.

MBC’s Web site also provides information directed towards its physician licensees. Under “Services for Licensees,” a physician may find information related to the enforcement process in general, California physicians and medical marijuana, the Expert Reviewer Program, fictitious name permits, guidelines for prescribing controlled substances for pain, patient privacy, patient activity reports from the California Department of Justice, MBC’s Diversion Program, and links to various forms, fact sheets, and other MBC publications (including a list of publications that physicians are required by law to provide to patients under certain circumstances).

The Board’s outreach to mandated reporters. Business and Professions Code section 800 *et seq.* requires many entities — including malpractice insurers, court clerks, coroners, hospitals, and physicians — to report certain information about physicians to the Board. As described in Chapter VI above, these mandated reporters are particularly valuable sources of information to MBC in detecting physician misconduct warranting discipline — including section 2220.05 priority cases.³⁶¹ Although MBC has posted easily-downloadable reporting forms for all mandated reporters on its Web site, some mandated reporters do not always file required reports with the Board, and/or do not fully comply with their reporting responsibilities.³⁶²

³⁶⁰ See *supra* Ch. XIII.B.4.

³⁶¹ See *supra* Ex. VI-B, Ex. VI-F.

³⁶² See *supra* Ch. VI.B.5.

In 2002, the PEC began to examine the various mandated reporters and the current methods used by MBC to inform and remind these reporters about their reporting responsibilities, and explore new ways in which MBC can stimulate greater compliance with the reporting laws. The Board sends a letter each year to coroners and court clerks in each county explaining the relevant reporting requirement and including a copy of the MBC form to be used in submitting such reports.³⁶³ A similar letter is sent to over 70 malpractice insurers.

Court clerk compliance with the reporting statutes is particularly low, and the PEC invited several court clerks to attend its meetings in 2003. As a result of their helpful input and testimony, it became clear that most court clerks (and the thousands of courtroom clerks across the state who support each individual judge in each courtroom in each county) are entirely unaware of the existence of the reporting requirements, and that the Board's annual letter to each of the state's 58 county court clerks does not "trickle down" to each of the many courtroom clerks who must file the reports. A related problem is that many courtroom clerks are often unaware that a defendant in their courtroom is a physician whose civil judgment or criminal conviction must be reported to MBC. This problem is only partly ameliorated by section 803.5(a), which requires public prosecutors who are prosecuting a physician to notify the court clerk that the defendant is a physician, because many prosecutors are also unaware of that notification duty or the court clerk's reporting requirement.

Because MBC is but one of many DCA agencies with court clerk reporting requirements, the Department of Consumer Affairs initiated communications with the Judicial Council in November 2002 to explore ways to improve court clerk compliance with all DCA agency reporting statutes. The Department agreed to draft an article outlining the various reporting requirements for all of its agencies for publication in various Judicial Council newsletters and for posting on Web sites to which court clerks, prosecutors, and/or judges have access. The same article would be shared with the California District Attorneys Association to make prosecutors aware of their responsibilities under the reporting statutes. In order to make reporting easier for court clerks, DCA also agreed to create a standardized reporting form for courts and make the form accessible through DCA's Web site. Due to the change in administrations in November 2003, this project is not yet complete. As its implementation is critically important to the success of the reporting requirements, this issue is already the subject of Recommendation #15 in Chapter VI.

The Board's outreach to prospective expert reviewers. As noted above in Chapter VIII, the Board has difficulty hiring and retaining adequate numbers of physicians to serve as expert reviewers for MBC enforcement cases. Outreach to physicians who may be willing to serve as expert reviewers is handled primarily through notices in the *Action Report* newsletter and information regarding these positions is posted on the MBC Web site. Additionally, Board members

³⁶³According to the Board, the letter to county clerks was not sent in 2003 or 2004 due to budget concerns.

and enforcement program representatives occasionally make presentations to hospital staffs, local and specialty medical societies, and other physician organizations to recruit prospective experts. In Recommendation #31 above, the Monitor has already commented on the need for trained, experienced expert reviewers, and has suggested ways in which MBC might expand its pool of experts.

The enforcement program's outreach to complainants and complained-of physicians.

In the past, MBC conducted consumer satisfaction surveys to measure its effectiveness in communicating with complainants to its enforcement program. In 1997, the Board conducted a consumer satisfaction survey as part of its first sunset review process. The results were “alarmingly poor,” showing that most of those filing complaints were highly dissatisfied with the outcome of their case (about 75%) and the overall service provided by the Board (about 60%).³⁶⁴

In an effort to improve its communications with those who file complaints, the Board changed its procedures to ensure regular communication with complainants about the status of their complaints, and developed three brochures which now accompany those communications. MBC now sends an acknowledgment letter when a complaint is received, and includes a brochure entitled *How Complaints Are Handled*, an overview of the steps taken in processing complaints. MBC next notifies the complainant when medical records are being reviewed by a medical consultant, and includes its brochure entitled *Most Asked Questions About Medical Consultants* to explain that part of the process. When that consultant makes findings, MBC mails a letter to the complainant explaining those findings. If the complainant is referred for investigation, the complainant is again notified and mailed another brochure entitled *Questions and Answers About Investigations*. Thereafter, the complainant is notified if an accusation is filed. If the case is closed, the consumer is informed of the reasons for closure and the manner in which that decision may be appealed.

During its 2001–02 sunset review of MBC, the JLSRC noted that surveys conducted in 1998, 1999, and 2000 indicated significant improvement in consumer satisfaction with MBC's communications about its enforcement process, although most consumers continued to be dissatisfied with the overall outcome of their case.³⁶⁵ The JLSRC and Department of Consumer Affairs recommended that MBC continue its efforts to improve communications with consumers who file complaints with the Board. The Board has continued its efforts, but has had insufficient funding to conduct consumer satisfaction surveys since 2000.

As discussed in Chapter VI above, MBC's procedure manuals set forth the points at which CCU and/or district offices should apprise complained-of physicians of the pendency of a complaint

³⁶⁴ Joint Legislative Sunset Review Committee, *2002 Sunset Review Report on Medical Board of California* (December 2001) at 63–64.

³⁶⁵ *Id.* at 64.

and/or investigation. Essentially, CCU contacts a subject physician if it needs medical records, and informs the physician that the matter has been closed only if it has previously contacted the physician in the matter. Similarly, field offices contact the physician if they need medical records and/or want to schedule a subject interview; otherwise, there is no strict policy that all physicians under investigation must be told of the pendency of an investigation. As the Monitor commented in Chapter VI, it would be inappropriate to establish a blanket rule requiring MBC to contact all physicians against whom a complaint has been filed or an investigation is commenced, because such contact might stifle undercover operations or encourage medical records alteration or destruction.

B. Initial Concerns of the MBC Enforcement Monitor

1. Physicians are not required to provide patients with information about the existence of the Board and its disciplinary jurisdiction.

Effective January 1, 1999, SB 2238 (Committee on Business and Professions) (Chapter 879, Statutes of 1998) added section 138 to the Business and Professions Code. That section requires each DCA board to adopt regulations by June 30, 1999 to require each licensee to “provide notice to their clients or customers that the practitioner is licensed by this state. A board shall be exempt from the requirement to adopt regulations if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner’s status as a licensee of this state.” It is unclear whether MBC has complied with section 138.

The PEC began a discussion on whether physicians should be required to provide patients with information about the Medical Board in January 2003. Many agencies — including health care-related agencies — require their licensees to provide customers or clients with information about their licensing board, its regulatory authority, and its contact information. Depending on the agency, this notice may be provided in a variety of ways — through brochures, posted notices, or statements on invoices and/or other documents that are given to the customer or client. For example, the Department of Managed Health Care recently adopted a regulation requiring managed care providers to post a notice in their waiting room areas informing subscribers and enrollees how to contact their health plan, file a complaint with their plan, obtain assistance from the Department, and seek independent medical review of a health plan’s decision. The notice must be displayed in English and in other languages commonly used in the community.³⁶⁶ Other California agencies require their licensees to provide some type of information to consumers, clients, or patients about the agency and

³⁶⁶ 28 CAL. CODE REGS. § 1300.67.8. The Department of Managed Health Care’s waiting room notice and translations can be found at www.dmhca.ca.gov and are available for downloading, printing, and posting.

its regulatory authority, including those regulating accountants,³⁶⁷ architects,³⁶⁸ engineers,³⁶⁹ optometrists,³⁷⁰ structural pest control operators,³⁷¹ geologists and geophysicists,³⁷² automotive repair dealers,³⁷³ contractors,³⁷⁴ and automobile insurers.³⁷⁵

Some Board members have expressed concern about the capability of MBC's enforcement program to handle the surge of patient complaints which may result if MBC imposes a similar requirement on physicians. To a certain extent, these Board members have a point. Although Exhibit VI-A indicates that patients are the source of the vast majority of MBC complaints, Exhibit VI-B indicates that few patient complaints are referred for investigation and/or result in disciplinary action.

On the other hand, Exhibit VI-F indicates that — in raw numbers — patients were the top source of section 2220.05 priority complaints resulting in disciplinary action taken between January 1, 2003 and June 30, 2004. Exhibit VI-F and its explanatory notes also indicate that MBC itself is the “source” of a large number of priority complaints resulting in disciplinary action; in many of those complaints, a Board investigator looking into a particular matter checked the Civil Index and found civil malpractice lawsuits filed against the subject physician by patients who had not filed a complaint with MBC. It seems clear that many California citizens do not know of the existence of the Medical Board, and that MBC is not educating patients sufficiently enough on the kinds of matters they should bring to MBC's attention.

The reality of patient ignorance of the MBC regulatory process cannot be ignored, nor is reducing that ignorance likely to overwhelm MBC's enforcement program. The many California agencies listed above manage their caseloads while still meeting their obligation to help the public seek redress of legitimate grievances. The Monitor believes that, as a matter of sound public policy, the Medical Board should likewise make better efforts to meet its obligation to assist victims of medical wrongdoing in understanding how to be involved with its enforcement program.

³⁶⁷ 16 CAL. CODE REGS. § 50.

³⁶⁸ *Id.* at § 140.

³⁶⁹ *Id.* at § 463.5.

³⁷⁰ *Id.* at § 1566.1.

³⁷¹ *Id.* at § 1937.17.

³⁷² *Id.* at § 3066.

³⁷³ *Id.* at §§ 3351.3, 3351.4.

³⁷⁴ Bus. & Prof. Code § 7030.

³⁷⁵ 10 CAL. CODE REGS. § 2695.85.

2. The Board does not communicate consistently with physicians during the complaint review and investigative process.

The Board has made a concerted and apparently successful effort to improve its communications with complainants throughout the complaint handling process. Its communications with subject physicians seem less consistent. Several defense counsel we interviewed stated that their clients were contacted for medical records by CCU but were never notified whether the complaint had been closed or referred for investigation. This appears to violate CCU's policy.³⁷⁶ Absent exigent circumstances in which the Board may be contemplating undercover operations, CCU and the district offices should make every effort to communicate case closures and other dispositions to subject physicians (see Recommendation #20).

3. MBC should communicate with local county medical societies about their obligations under Civil Code section 43.96.

SB 916 (Presley) enacted Civil Code section 43.96, which requires medical societies, hospitals, and local government agencies that receive a written complaint against a physician to affirmatively notify the complainant that they have no jurisdiction over the physician's license and that only MBC may discipline a physician's license. Further, the local entity must "provide to the complainant the address and toll-free telephone number" of the Board. The Monitor checked a number of Web sites of county medical societies. A few of them that offer "complaint processes" — including the San Diego County Medical Society and the Ventura County Medical Association — state in bold print that the medical society has no authority to require a physician to follow its recommendation or to take action against a physician's license; those sites provide MBC's address and toll-free number. Others — including the Los Angeles County Medical Association and the Orange County Medical Association — make no such statement. Because some of these organizations with the word "county" in their name offer "complaint processes," consumers sometimes confuse them with the Medical Board and fail to file a complaint with the only entity that can protect the public from a dangerous physician.

C. Initial Recommendations of the MBC Enforcement Monitor

Recommendation #53: Physicians should be required to inform patients about the Medical Board's existence, disciplinary jurisdiction, address, and toll-free complaint number. MBC should implement a system to ensure that its licensees inform the patient public about its existence and enforcement role. Physicians could be given a variety of options to accomplish this

³⁷⁶ Medical Board of California, *CCICU Procedure Manual* at § 9.2; see also Medical Board of California, *Enforcement Operations Manual*, at Ch. 7, § 7.1. See *supra* Ch. VI.B.8. and Recommendation #20.

consumer education — for example, a fact sheet, a posted waiting room notice, or a disclosure on a discharge summary, invoice, or other document routinely given to patients.

Recommendation #54: As suggested in related Recommendation #20, MBC's enforcement program should ensure that complained-of physicians are appropriately notified of complaint dispositions.

Recommendation #55: MBC should periodically communicate with local county medical societies and remind them of their obligations under Civil Code section 43.96, to ensure that those private organizations are properly referring complainants to the Medical Board.

